Mewar Marbles Ltd. vs. State of Rajasthan & Ors.

SB Civil Writ. Petition No.6411/2005

Date of Order: 24th November, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.M.S.Singhvi for the petitioner.

Mr.N.M.Lodha Addl.Advocate General.

Mr.M.R.Singhvi] for the respondent/s.
Mr.P.S.Bhati]
Mr.Vikas Balia]

BY THE COURT:

Heard learned counsel for the parties.

By the present writ petition the petitioner has challenged the grant made in favour of respondent Nos. 5 to 8 on the ground that it is a case of colourable exercise of jurisdiction.

On 23.09.05 the representation of the petitioner was rejected and the same was dispatched to the petitioner on 28.09.05.

Prior to the dispatch of this order, application of the other respondents i.e. Respondent No. 5 to 8 was received on 26.09.05 and within two days of the moving of their application the Director has granted sanction. The Director has also relaxed the conditions of grant of lease, less than four hectors. The order of grant of mining lease was issued on 01.10.05 and the stamp for execution of the mining lease was purchased on 01.10.05 and the lease was executed on 03.10.05 and possession was delivered on 05.10.05.

The arguments of the learned counsel for the petitioner is that with the speed with which sanction has proceeded in this case show that the respondents were not prepared to take any chance and were desirous of getting the lease sanctioned and possession acquired under the lease which was granted to them under the colourable exercise of power and with the conscious and specific influence of respondent No.9 and 10 .

To go into the question of malafides, it would be necessary to see what is the stand of the petitioner. Petitioner's claim that grant of any mining lease if judged, then it cannot fail to be concluded that but for the requirement of consent of the surface lease holder the petitioners could not have succeeded in

getting the mining lease, as has been held by this Court in another writ petition moved on behalf of the petitioner. There it has been held that the petitioner's right was not matured enough to get a favourable lease in his favour. Once the right of the petitioner is held to be not perfect enough for the grant , it can be seen that he has looked out for every effort to check the grant in favour of respondent No. 5 and 8. None else than the petitioner has come to challenge the same. It cannot be said that petitioner alone will have the right to challenge the grant, if it was in colourable exercise of jurisdiction, or for that matter under the influence of respondent No.9 and 10. Many aspirants would have wanted to come to challenge the same. Since the entitlement of the petitioner himself had been found wanting in legitimate requirement, it cannot be said that lease has not been properly granted to respondent 5 to 8. Mere speed would not be enough to conclude that it was in colourable exercise of jurisdiction.

It is a also important to note that the petitioner has been seemed to have no capacity to run the mines all by himself . The period under which he was permitted to operate the mines by RSMDC and the State Government, he has sought the help of others in operating the mines . Thus also the case of the petitioner stands

on weak footing. His workers have also made illegal mining that also show that he hardly had a control of the operations under his guidance and supervision.

The petitioner could not have got the lease, but for his interim entitlement . The allegation of malafides are required to be seen with caution. Primary charge is speed of the processing. Secondary charge is late dispatch of order of rejection . This Court has found rejection justified. Petitioner has been found to be not entitled as surface right holder has turned against him. Then remains the speed. May be it was fast but one would expect to see the bureaucratic red tapism to loosen up and acquire speed.

In that view of the matter, no interference is called for. There is no force in the petition the same is dismissed.

(BHAGWATI PRASAD), J.

L.George